IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 26.2.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

S.A.No.653 of 1996
and
CMP.No.6476 of 1996

1.Radha
2.Samandhi
3.Sabirabi
4.Godavari
5.Subra .... Appellants[Plaintiffs]

Vs.

The Commissioner
Panchayat Union
Arani. .... Respondent[Defendant]

This Second Appeal has been preferred against the Judgment and decree, dated 27.02.1996, made in A.S.No.28 of 1994, on the file of the Sub-ordinate Judge's Court, Arani, confirming the judgment and decree, dated, 12.04.1993, made in O.S.No.427 of 1989, on the file of the District Munsif's Court, Arani.

For appellants : Mr.S.Mohanasundararajan
for M/s.A.Jinasenan
Senior Advocate
For respondent : M/s. Liagat Ali

This Second Appeal has been preferred against the Judgment and decree, dated 27.02.1996, made in A.S.No.28 of 1994, on the file of the Sub-ordinate Judge's Court, Arani, confirming the judgment and decree, dated, 12.04.1993, made in O.S.No.427 of 1989, on the file of the District Munsif's Court, Arani.

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2. Heard the learned counsels appearing for the appellants as well as the respondent.

3. The plaintiffs in the suit O.S.No.427 of 1989 are the appellants in the present second appeal. The plaintiffs had filed O.S.No.427 of 1989, before the District Munsif Court, Arani, praying for a permanent injunction restraining the defendant therein and the respondent in the present Second Appeal from interfering with the petitioner's possession of

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the suit property and for costs.

4. The case of the plaintiffs was that each one of them was residing in Arani Town Block No.C/6 in an extent of one cent out of the two acres and they were residing in the said place for more than 15 years. They had filed B-Memos issued by the government as exhibits A-1 to A-5. It is the further case of the plaintiffs that the suit property belongs to the government and not to the respondent panchayat Union.

5. On the other hand, the respondent had contested the suit filed by the plaintiffs on the ground that the suit property belongs to the respondent panchayat union and the B-Memos filed by the plaintiffs as exhibits- A-1 to A-5 do not relate to the suit property and that the suit property is situated in Town Block No.C/8 in T.S.No.3/2 and 7/2. Since the property belongs to the respondent panchayat union, they have taken steps to evict the plaintiffs from the said suit property. The defendant had stated that plaintiffs had no right in the suit property whatsoever and therefore, the reliefs sought for by the plaintiffs cannot be granted and the suit was liable to be dismissed.

6. While deciding the suit, the trial court had framed the following issues based on the rival contentions of the parties concerned.

1) Whether the suit for permanent injunction was maintainable without a prayer for declaration of title?
2) Whether suit property was a poramboke belonging to the government ?
3) Whether the non-joinder of the necessary parties would affect the suit?
4) Whether the description of the schedule of properties in the suit was right?
5) Whether the properties encroached upon by the plaintiffs belonged to the defendant?
6) Whether the plaintiff is prohibited from denying the title and prevent the defendants?
7) Whether the suit is effected due to the failure of the plaintiffs to give notice under Section 80 of the Civil Procedure Code.
8) To what other reliefs the plaintiffs are entitled to?

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7. The trial Court, based on the oral and documentary evidence available before it, had come to the conclusion that the suit property belonged to the defendant and therefore, the plaintiffs cannot claim the relief of permanent injunction as prayed for in the suit. The trial Court had found from Exhibit B.2 filed on behalf of the defendant that the suit property in question had belonged to the defendant Panchayat Union. It had also been found by the trial Court that the plaintiffs had stated that the suit property is to an extent of one cent in an extent of two acres in C/6 Block. However, the plaintiffs had not shown the boundaries of the one

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cent of land as claimed by them to be in their occupation and possession. Therefore, the trial Court could not rely on Exhibits A.1 to A.10, marked on behalf of the plaintiffs, in support of their case. From the oral evidence let in on behalf of the plaintiffs, the trial Court had found that the suit property was within the compound of the Block Development Office. Therefore, by a Judgment and decree, dated 12.04.1993, the learned District Munsif had dismissed the suit holding that the suit property belongs to the respondent panchayat union.

8. Aggrieved by the the said Judgment and decree, dated 12.04.1993, the plaintiffs in the suit had filed an appeal before the learned Sub-ordinate Judge, Arani, in A.S.No.28 of 1994. The lower appellate Court had framed the following points for consideration:

"(1) Whether the judgment and decree of the trial Court is correct?
(2) Whether the appeal is to be allowed?"

9. After analysing the evidence on record and the rival contentions of the parties concerned, the lower appellate Court had confirmed the judgment and decree of the trial Court made in O.S.No.427 of 1989. The lower appellate Court had come to the conclusion stating that the suit property belonged to the defendant and that the plaintiffs were not entitled to the prayer of permanent injunction against the respondent Panchayat Union.

10. Aggrieved by the judgment and decree of the lower appellate Court, dated 27.2.1996, confirming the judgment and decree of the trial Court, dated 12.4.1994, the present second appeal had been filed.

11. The second appeal has been admitted by this Court on the following substantial question of law:-

"Whether the judgments and decrees of the Courts below which have not considered the material document like Exhibits A.1 to A.5 while deciding the question of possession so as to grant injunction to the suit property are sustainable in law?"

12. Being aggrieved by the Judgment and decree passed by the learned Sub-ordinate Judge, Arani, the plaintiffs had preferred the present second appeal before this Court on the following among other grounds, namely,

1) Both the trial court and the first appellate court had omitted to see that the suit property belongs to the government and it was situated in Arani, Town Block No.C/6 in T.S.No.7/1 and instead it has been wrongly stated that the suit property is situated in town Block No.C/8 in T.S.No.3/2 and 7/2.
2) The Courts below have not given due importance to the B-Memos marked as exhibits A-1 to A-5 to show that the suit property belongs to the government. Inspite of the B-Memos having been

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filed on behalf of the plaintiffs in the suit and the appellants herein both the courts have wrongly held that the suit property belonged to the respondent panchayat union.

3) Both the Courts below have erred in failing to take into account exhibits A-6 to A-10 which was the voters list showing that the appellants were residing in the suit property.

4) The Courts below have wrongly construed the failure of the appellants to produce the rations cards before the Court and had held that the appellants were not in possession of the suit property.

5) The conclusion of the Courts below that P.W.1 had specifically admitted that the suit property belongs to the defendant panchayat union is erroneous and without any basis.

13. It is pointed out by the learned counsels appearing for the appellants that it is a fact that the suit O.S.No.427 of 1989 had been filed on 01.07.1989, and that it has been stated in the written statement filed on behalf of the defendant panchayat union that the plaintiffs had been removed from the suit property as on 10.07.1989. Therefore, it was contended that on the date of filing of the suit ie. on 01.07.1989, the appellants had been in occupation of the suit property. Hence, the appellants were eligible for a decree of permanent injunction in their favour. The learned counsel has also stated that both the Courts below have failed to rely on the B-Memos filed as exhibits A-1 to A-5.

14. On the other hand, the learned counsel appearing on behalf of the respondent panchayat union had stated that B-Memos were for only one year, while the appellants had claimed to be in occupation of the suit property for over fifteen years. It is clear from the exhibits filed on behalf of the respondent, including the revenue records, that the plaintiffs had encroached on to the property belonging to the respondent and that they were liable to be evicted without any notice, since they were rank trespassers. From P.W.1's evidence, it is clear that the plaintiffs had illegally occupied the property belonging to the defendant panchayat union. It has also been contended by the learned counsel for the respondent that B-Memos alleged to have been issued by the government to the plaintiffs were relating to a different survey number and not to the suit property as claimed by the plaintiffs. In such circumstances, the Courts below had rightly concluded by dismissing the suit filed by the plaintiffs as well as the appeal filed thereon.

15. Both the Courts below had found that the plaintiffs had not been in a position to clearly identify the suit property of one cent by showing its boundries, even though it is stated to be part of the two acres in C/6 Block. Further, it has been clearly found, based on the evidence let in on behalf of the plaintiffs, that the suit property is within the compound of

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the Block Development Office. It was found by the Courts below that the Exhibits A.1 to A.10, filed on behalf of the plaintiffs, could not clearly show that the plaintiffs were in occupation of the poramboke land belonging to the Government or that they have been authorised to be in occupation of the same.

16. On a perusal of the records available before this Court and on analysing the reasons given by the Courts below it is clear that the plaintiffs have not proved that they are in possession of the suit property which is said to be a government property. The B-Memos filed by the appellants in the suit do not show that they relate to the suit property and there is no clear description or measurements or the boundaries of the property shown in the said B-Memos. On the contrary, it has been shown by documentary and oral evidence, let in on behalf of the respondent, that the suit property belongs to the respondent panchayat union and not to the government, as alleged by the plaintiffs. The evidence of P.W.1, also points to the same fact. If the claims made by the plaintiffs are true and correct that the suit property, alleged to have been in their possession, belonged to the Government, then the plaintiffs ought to have made the Government as a party defendant. The non-joinder of such a necessary party would be fatal to the case of the plaintiffs.

17. In such view of the matter, this Court is of the considered view that the appellants cannot be granted the reliefs prayed for, and the second appeal is liable to be dismissed. Accordingly, it is dismissed. No Costs. Consequently, the connected C.M.P is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To:
1. The Sub-ordinate Judge, Arani
2. The Principal District Munsif, Arani
3. The Record Keeper, VR Section, High Court, Madras.
+ 1 CC To Mr. M.Liagat Ali, Advocate SR NO.11599

S.A.No.653 of 1996

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